



POLICE DEPARTMENT

April 3, 2018

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In the Matter of Charges and Specifications	:	Case No.
- against -	:	2016-15849
Police Officer Ted Holway	:	
Tax Registry No. 941041	:	
79 Precinct	:	

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At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable David S. Weisel
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Samuel Yee, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For the Respondent: Craig R. Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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Charges and Specifications:

1. Said Detective Ted Holway, while assigned to Narcotics Borough Staten Island, on or about March 14, 2015, while on duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Detective wrongfully used his cellular telephone several times for non-Department purposes.
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
P.G. 206-03, Page 1, Paragraph 20 – GENERAL REGULATIONS
VIOLATIONS SUBJECT TO COMMAND
DISCIPLINE
DISCIPLINARY MATTERS
2. Said Detective Ted Holway, while assigned to Narcotics Borough Staten Island, on or about April 4, 2015, while on duty, wrongfully divulged confidential information and/or discussed official Department business.
P.G. 203-10, Page 1, Paragraph 3 – PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS
3. Said Detective Ted Holway, while assigned to Narcotics Borough Staten Island, on or about April 4, 2015, while on duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Detective wrongfully used his cellular telephone several times for non-Department purposes.
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
P.G. 206-03, Page 1, Paragraph 20 – GENERAL REGULATIONS
VIOLATIONS SUBJECT TO COMMAND
DISCIPLINE
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SUMMARY OF FINDINGS AND RECOMMENDED PENALTY

The above-named member of the Department appeared before the Court on February 9, 2018. Respondent, through his counsel, entered a plea of Guilty to all charges and testified in mitigation of the penalty. A stenographic transcript of the record has been prepared and is available for the Police Commissioner's review.

After reviewing the evidence presented at the mitigation hearing, assessing the credibility of the witness, and Respondent having pleaded Guilty to all charges, the Court finds Respondent Guilty.

Facts

This matter arose out of a wiretap conducted by the New York County District Attorney's Office. The wiretap had nothing to do with Respondent, who was assigned to a narcotics

command in Staten Island, often working in Street Narcotics Enforcement Units (SNEU). The targets of the wiretap were Person A and his son, Person B. Person B was a childhood friend of Respondent. The wiretap captured a series of text messages between Respondent and Person B. Respondent was on duty during both occasions in question. On one date, Respondent and Person B engaged in casual conversation. On the second date, however, Respondent's command arrested a woman named Person C for buying narcotics. Person C was Person B's stepsister, whom Respondent knew. It was undisputed that Respondent was not involved in Person C arrest or release. Respondent did, however, come to the arrest scene afterward and communicated with Person B about the arrests of Person C and the sellers.

RESPONDENT testified that he formerly was assigned to Narcotics Borough Staten Island and was promoted to the rank of Detective in November 2016. He agreed that on March 14, 2015, he was assigned to the prisoner van during undercover buy-and-bust operations. Respondent was exchanging text messages with Person B, a friend of his from their teenage and young adult years. Respondent currently is [REDACTED] years old. Both he and Person B grew up [REDACTED] and had shared a house on the Jersey Shore in their younger days. Respondent had not spoken to Person B since getting married, but they re-connected after running into each other at a cancer charity event (Tr. 10-12, 16-17, 24-25).

Respondent testified that on March 14, 2015, he and Person B were texting each other about "old school memories," like "drinking . . . and stuff like that." Respondent joked that Person B should bring him a few beers. Person B commented that he was driving drunk and Respondent should not follow him. Respondent told Person B that he had a PBA card for him. Respondent also joked with Person B to bring him vodka, and then, remarking that the "vodka" was warm, asked, "[D]o I look black"? They did not discuss Department business, but Respondent admitted that he was supposed to remain alert and available for police action in case

anything happened to the undercovers. Respondent conceded that there was at least one arrest during the time these text messages were being exchanged (Tr. 11-12, 18-20).

Respondent testified that he also texted with Person B on April 4, 2015. He was performing narcotics enforcement as the sergeant's operator. One of the subjects was Person C. Respondent arrived at the scene to see an arrest being made. He recognized the house in question as being Person B's childhood home. Person C allegedly had come out of the house to buy drugs, but never actually made the purchase and thus was released. Two sellers were arrested in an automobile (Tr. 12-13, 20-22).

Respondent admitted that he texted Person B to call him as soon as possible. He knew that Person C had drug problems and wanted to let Person B know she was buying drugs. Respondent also was concerned for Person C's daughter, that is, Person B's niece. Respondent texted Person B the name and photograph of one of the sellers. When Respondent transported this arrestee to the 120 Precinct station house, the prisoner said that he knew Person B's entire family (Tr. 13-15, 22-24).

Respondent affirmed that he did not know Person B was the subject of a wiretap or under investigation by law enforcement. He had known him as a "good kid" who did not get into trouble. Respondent was demoted to the rank of Police Officer as a result of these charges and no longer is assigned to a narcotics command (Tr. 10, 15, 25).

Penalty Recommendation

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 31, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department recommended a penalty of the forfeiture of 20 vacation days (Tr. 30). That is excessive on the basis of the facts of this case and the precedent cited by the Department. The cited cases generally involve either criminal association or divulging to someone that he was the subject of a confidential investigation. Neither of those factors is present in Respondent's case. Respondent did not know of Person B's suspected criminal activity, and he divulged nothing about a confidential investigation.

Still, this was a serious matter. Respondent made a racially-tinged remark to his friend, even in jest, and divulged the name of an arrestee as well as his photograph. While the Court accepts that Respondent did the latter in order to help Person B's sister with her drug problem, such an action cannot be countenanced and could have had serious extra-legal consequences.

As the Advocate conceded it should, the Court has taken into account Respondent's excellent work history. It also has considered, as the Advocate recommended, that Respondent was, at the time of these events, a Detective assigned to a narcotics command. He since has been demoted and transferred to a line command (Tr. 32).

As such, the Court recommends that Respondent forfeit 10 vacation days as a penalty. See Case No. [REDACTED] (19-year detective with no prior disciplinary record forfeits 10 vacation days after using Department computer to access arrest photo of a professional football player and then forwarding photo to friend's cell phone).

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

MAY 03 2018

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER TED HOLWAY
TAX REGISTRY NO. 941041
DISCIPLINARY CASE NO. 2016-15849

Respondent was appointed to the Department on January 31, 2006. His last three formal performance evaluations were as follows: Respondent received an overall rating of 4.0 "Highly Competent" in 2016, and 3.5 "Highly Competent/Competent" in 2015 and 2014. Respondent has been awarded five medals for Excellent Police Duty.

[REDACTED]

Respondent has no disciplinary record.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner Trials